

Economic Impact Statement

LSA Document #07-748

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Indiana Code 4-22-2.1-5(a) provides that an agency that intends to adopt a rule under [IC 4-22-2](#) that will impose requirements or costs on small businesses must prepare a statement that describes the annual economic impact of the rule on small businesses after the rule is fully implemented as described in (b). That statement must be submitted to the Indiana Economic Development Corporation (IEDC); the IEDC is required to review the rule and submit written comments to the agency not later than seven days before the public hearing.

The proposed rule makes three changes that impose requirements or costs on small businesses. The proposed rule: 1) extends the period of time that a qualified organization is required to maintain records regarding allowable events from four years to five years; 2) decreases the frequency with which financial records are required to be submitted to the Commission from a quarterly reporting schedule to an annual reporting schedule; and 3) determines that a license for a type of allowable event obtained by an organization who has refrained from conducting that type of event for a period of at least five years is an initial license. In addition to these changes, the proposed rule: 1) limits the number of charity game night licenses for which certain organizations may apply; and 2) removes the requirement that an organization conducting gaming and holding an annual convention simultaneously in the same facility and spending more than \$200 in rent for that facility provide the Commission with brochures, newsletters, and other materials regarding the annual convention. The proposed rule also makes several ministerial and administrative changes to the administrative rule that have no fiscal impact on small businesses.

Estimated Number of Small Businesses Affected

The proposed rule applies to a limited group of qualified organizations that conduct charitable gaming events. Indiana Code 4-32.2 specifies the types of organizations that may conduct charity gaming events. A qualified organization must be not-for-profit and exempt from taxation. In addition, bona fide political organizations, not including candidate's committees, and educational institutions may also be qualified organizations. Certain hospitals or health care facilities may conduct some qualified events.

For the purpose of this analysis, the Commission has identified all currently licensed organizations as small businesses. The Commission's charity gaming database currently consists of 2,666 entities qualified to conduct gaming in the state of Indiana. The majority of the qualified organizations conducting events are included in the following industrial classifications:

- NAICS 813 Religious, Grantmaking, Civic, Professional, and Similar Organizations (85%)

- NAICS 8131 Religious organizations

- NAICS 8132 Grantmaking & giving services

- NAICS 8133 Social advocacy organizations

- NAICS 8134 Civic and social organizations

- NAICS 8139 Business, professional, labor, political, and similar organizations

- NAICS 611 Educational Services (14%)

- NAICS 62 Health Care and Social Assistance (1%)

Please note that many of these organizations may not actually meet the definition of an Indiana small business as defined in [IC 4-22-2.1-4](#). A small business is defined as any person, firm, corporation, limited liability company, partnership, or association that is actively engaged in business in Indiana and maintains its principal place of business in Indiana. Small businesses are independently owned and operated, employ 100 or fewer full-time employees, and have gross annual receipts of \$5,000,000 or less.

Since all qualified organizations are not-for-profit entities, the very nature of these organizations calls into question whether these organizations should be included in the group of small businesses contemplated by the statute. The U.S. Census Bureau does not even track data for some industrial classifications that include these organizations. For example, religious organizations, political organizations, and education institutions were not counted in the 2002 Economic Census. These organizations rarely export their services outside of the state or even local community and do not necessarily contribute to the base economy of the state.

In addition, some of these organizations are subsidiaries of national charitable organizations that do not have a principal place of business in Indiana. The Indiana subsidiary may not be independently operated. Finally, some of the qualified organizations generate gross annual receipts of over \$5,000,000. Seven qualified organizations generate over five million in charity gaming receipts alone.

The Commission does not have sufficient information at this time to determine which qualified organizations specifically meet all the elements of the definition of a small business. Thus, for the purpose of this analysis, the Commission has identified all current qualified organizations as small businesses under [IC 4-22-2.1-4](#). As a result, the projected impact on small businesses as defined in [IC 4-22-2.1-4](#) may be significantly inflated versus the

Estimated Administrative Costs Imposed on Small Businesses**Record Retention Extension**

Pursuant to [68 IAC 21-4-1](#) (d), a qualified organization must retain all documents associated with allowable events and all documents kept in the regular course of allowable events for a period of four years from the conclusion of the allowable event. The proposed rule extends the length of time an organization must retain these records one year from four years to five years. All qualified organizations conducting allowable events are already required to maintain these records. The proposed rule does not increase the number or types of records maintained or impose requirements on how those records are maintained. To determine the fiscal impact of the proposed rule on small businesses, the Commission staff randomly selected qualified organizations and interviewed those organizations to assess the financial impact of maintaining records associated with allowable events for one additional year. Of the organizations interviewed, 91% indicated that maintaining these records for an additional year results in no additional costs to the organization. Four and one-half percent indicated that maintaining records for an additional year would result in additional costs, but that those costs were negligible. Four and one-half percent indicated that maintaining the records for an additional year would result in additional costs, but were unable to assess the dollar amount of those costs. Based on the information gathered, the Commission is unable at this time to determine the fiscal impact the proposed rule will have on qualified organizations, but believes that the additional costs will be minimal.

Annual Reporting Requirements

The proposed rule will impose new reporting schedules and possibly reduce administrative costs on qualified not-for-profit organizations licensed to conduct charity gaming events. A qualified organization operating under an annual license will be required to submit financial statements on an annual basis under the proposed rule rather than quarterly as required under the current rules.

In 2007, the Commission adopted final administrative rules (LSA Document #06-335) regarding the conduct of charity gaming. One provision of #06-335 changed the frequency with which qualified organization were required to file financial records from an annual reporting schedule to a quarterly reporting schedule. In determining the economic impact on small businesses of that rule, a survey of licensed organizations was conducted. The Commission staff contacted organizations from each of the following categories: political, religious, civic/social, health care provider, educational, and other business organizations. The staff randomly selected organizations from each category and requested that they complete a standardized questionnaire providing input on the proposed changes to the reporting requirements. The organizations reported the current average annual cost for financial reporting and estimated the increase in those costs with the quarterly filing required under the proposed rule. Some organizations reported that financial reporting tasks were handled by volunteers and thus the new requirements would not pose any financial cost but would require additional time of the volunteers. The information gathered during the adoption process for #06-335 is applicable here.

Based on the data gathered, the Commission anticipated at that time that the average annual increase in administrative costs to be approximately \$416 per organization that incurs such costs. The average annual expense for financial reporting for all surveyed organizations that incurred such costs was approximately \$500. The survey projected an increase in average annual costs to \$916, which is approximately an 83% increase. This rule will return the reporting frequency back to an annual schedule and will result in a decrease of such fees by approximately 83%.

Currently, 931 organizations hold an annual license with the Commission and would be subject to these decreased costs. However, as noted above, the Commission estimates that a portion of the organizations holding an annual license use volunteers to fulfill the reporting requirements. Based on the #06-335 survey responses, the Commission believes that approximately 30% of these organizations still utilize volunteers at no cost to the organization. These organizations will experience no financial impact but will simply require less volunteer time to handle the proposed reporting requirements. Adjusting for the "volunteer" factor, the total reduction in costs to qualified organizations resulting from the new reporting requirements is estimated to be approximately \$248,685. Again, the impact is based on the assumption that all qualified organizations are small businesses.

Annual Conference Materials

Pursuant to [68 IAC 21-2-1](#) (d), a qualified organization conducting gaming and holding an annual convention simultaneously in the same facility and exceeding \$200 in rent for that facility must submit to the Commission: 1) a convention brochure; 2) a newsletter distributed to its membership announcing the annual meeting; 3) any registration forms for the convention; and 4) minutes of the meetings showing the discussion and planning of the convention. Because the statutory rent limit upon which this provision was based was repealed during the last legislative session, the Commission proposes in this rule to remove this provision. Doing so will save any such qualified organization the costs associated with providing the aforementioned items to the Commission. At this time, the Commission is unable to determine how many qualified organizations are currently required to submit

this information; however, the Commission estimates that the savings to each qualified organization subject to this rule will not exceed \$1 in mailing costs.

Estimated Total Annual Economic Impact on Small Businesses

Initial License Fee

An organization obtaining a license other than an initial license must pay a license renewal fee based on the organization's income from the preceding year or event. The initial license fee is set by administrative rule at \$50; license renewal fees are set forth in [IC 4-32.2-6-3](#). The proposed rule will provide that a license for an event obtained by an organization who has not lawfully conducted that particular type of event for a period of five years will be considered an initial license rather than a license renewal. Currently, the Commission has in its database 1,200 qualified organizations that have refrained from conducting for a period of at least three years; however, at this time, the Commission is unable to determine how many organizations have withdrawn from gaming for a period of at least five years. Of those 1,200 organizations, the Commission reviewed the financial records of 20 qualified organizations and found that 19 qualified organizations were affected by the proposed rule. Thirteen of those organizations held annual licenses; seven held individual, or single, licenses. The total savings to those organizations holding annual licenses was \$93,450, for an average of \$7,188 per organization. The total savings to those organizations holding individual licenses is \$500, for an average savings of \$71 per organization. It is important to note, however, that the only organizations affected by this change will be those organizations who decide to obtain a license for the same activity a license was previously held. Because the Commission has no way of identifying which organizations will reapply for licensure, the Commission cannot assess the total economic impact on small businesses at this time.

Charity Game Night License Limit

Although it imposes no additional costs or requirements on a qualified organization, it is important to note that the proposed rule limits the number of charity game night licenses a qualified organization, other than a bona fide civic or veterans organization having been in existence for 10 years or more, may obtain. Until July 1, 2007, [IC 4-32.2-5-7](#) limited the number of charity game night licenses that a qualified organization could obtain to four per year. As of July 1, 2007, any bona fide civic or veterans organization having been in existence at least 10 years could obtain an annual charity game night license that would allow charity game night events up to three days per week. The statutory limit on the number of licenses other organizations could obtain was inadvertently eliminated. The proposed rule replaces that limit. Again, the Commission estimates that this portion of the proposed rule will impose no additional requirements or costs on qualified organizations because this limit was preexisting in statute.

Total Annual Economic Impact on Small Businesses

Based on the foregoing, the total annual decrease in costs which can currently be assessed, including administrative costs, to Indiana small businesses as a result of the proposed rule, will be approximately \$248,000. This calculation is based on the assumption that all qualified organizations are small businesses. The impact on actual small businesses may be substantially less.

Justification of Requirements or Costs

Record Retention Extension

Pursuant to [IC 4-32.2-1-3](#), an allowable event may not be conducted in Indiana unless it is conducted by a qualified organization. The Commission is charged with the responsibility of determining that an organization wishing to conduct allowable events is a qualified organization. If an organization that has been determined by the Commission to be a qualified organization does not conduct an allowable event for a period of five years, the organization must provide the Commission with information sufficient for the Commission to determine that the organization is still a qualified organization. As part of that requalification determination, the Commission reviews all records required to be kept by [68 IAC 21-4-1\(d\)](#).

Pursuant to [68 IAC 21-4-1\(d\)](#), a qualified organization must retain all documents associated with and kept in the regular course of conducting an allowable for a period of four years from the conclusion of the allowable event. Because an organization refraining from conducting allowable events currently need only maintain its records for four years, an organization returning to gaming after a five year hiatus may not have all the records necessary for the Commission to determine that the organization is still a qualified organization. One of the Commission's goals is to expedite the requalification process, which can be done if organizations who need to requalify already maintain the records necessary to the requalification determination. This is accomplished by requiring qualified organizations to maintain these records five years instead of four. Additionally, requiring organizations to maintain records from the preceding five years will assist the Commission in determining that bona fide religious, educational, senior citizen, veterans, or civic organizations meet the five year existence requirement established in [IC 4-32.2-2-24\(a\)\(1\)](#). Furthermore, this change is consistent with the change in the proposed rule, which makes a determination that a license obtained by an organization refraining from conducting

a particular type of event for five years is an initial license, as those records can help the Commission in making a determination that the organization has, in fact, refrained from a particular type of gaming for five years.

Annual Reporting Requirements

According to [IC 4-32.2-5-5](#), qualified organizations are required to maintain accurate records of all financial aspects of an allowable event. Qualified organizations are required to deposit funds received from an allowable event in a separate and segregated account set up for that purpose. All expenses of the qualified organization with respect to an allowable event shall be paid from the separate account. To assist in monitoring compliance of these statutory requirements, qualified organizations must make accurate reports of all financial aspects of an allowable event to the Commission within the time established by the Commission.

The proposed rule changes the reporting schedule of qualified organizations holding an annual license from quarterly reporting of their gross financial revenue to the Commission to annual reporting. In 2007, when the Commission went from annual reporting to quarterly reporting, the Commission believed that quarterly reporting would assist the Commission in identifying issues of fraud, money laundering, and underreporting of income in a timelier manner. The Commission believed that the change would improve the Commission's ability to monitor for compliance and would assist in ensuring the integrity of charity gaming. Since the change, the Commission recognizes that qualified organizations are unable to obtain the requisite records timely and the Commission is unable to timely process quarterly reports. Additionally, the Commission has found that obtaining financial reports quarterly has not led to the identification of any instances of fraud, underreporting, or money laundering. The change back to an annual reporting schedule will allow more complete review of the financial reports submitted by qualified organizations in comparison to quarterly reporting.

Initial License Fee

Pursuant to [IC 4-32.2-6-3\(b\)](#) and [68 IAC 21-2-6](#), a qualified organization must pay a \$50 each time it obtains an initial license for any particular type of allowable event. Normally, an organization having refrained from gaming for any period of time that is applying for a license for a type of allowable event the organization had previously conducted would pay a renewal fee based upon [IC 4-32.2-6-3\(c\)](#). Except for those organizations whose income from gaming was less than \$15,000, the renewal fees outlined in [IC 4-32.2-6-3\(c\)](#) are significantly greater than the \$50 initial fee. The proposed rule provides that these subsequent licenses of such organizations will be considered an initial license, thereby significantly reducing the cost of obtaining such a license. Although in this short term this proposed change will result in an undeterminable reduction in income from license fees to the state, this proposed change will encourage those organizations who have refrained from gaming due to costs of license fees to resume conducting allowable events. The initial license fees generated from those activities will result in some income to the state. Pursuant to [IC 4-32.2-5-3\(a\)](#), those organizations who resume charity gaming activities will then be required to use the net proceeds from gaming for the lawful purposes of the qualified charitable organization, which will result in additional monies spent for charitable purposes.

Charity Game Night License Limit/Annual Conference Materials

As previously noted, although not resulting in any additional costs or requirements on small businesses, the proposed rule: 1) limits the number of charity game night licenses that may be obtained by a qualified organization that is not a civic or veterans organization having been in existence for at least 10 years, and 2) removes the requirement that organizations conducting gaming and holding an annual convention simultaneously in the same facility and exceeding \$200 in rent forward to the Commission a variety of records regarding that convention. During the 2007 legislative session, the legislature carved out an exception to the statutory four event limit in [IC 4-32.2-5-7](#) by creating an annual charity game night license that would allow civic and veterans organizations having been in existence for 10 years to conduct charity game nights three days a week on not more than two consecutive days. The removal of the statutory limit on the number of charity game night licenses a qualified organization may obtain was inadvertent. The proposed rule restores this limit.

Additionally, prior to July 1, 2007, the charity gaming statutes capped the amount rent that could be spent on a facility in which gaming would be conducted at \$200 per day, unless the organization was holding an annual convention. Accordingly, the Commission required the information currently required by [68 IAC 21-2-1\(d\)](#) to verify that the event for which the rent exceeded \$200 was an annual convention. As of July 1, 2007, the rent limit was removed. Accordingly, the Commission no longer has a need to obtain the records required by [68 IAC 21-2-1\(d\)](#). Removing this requirement eases that burden previously imposed upon qualified organizations and relieves the Commission of reviewing information no longer needed.

Regulatory Flexibility Analysis

The Commission considered alternative methods of achieving the purpose of the proposed rule that are less intrusive or less costly. Specifically, the Commission has considered the following for each of the changes in the proposed rule:

1. The establishment of less stringent compliance or reporting requirements for small businesses.

2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.
3. The consolidation or simplification of compliance or reporting requirements for small businesses.
4. The establishment of performance standards for small businesses instead of design or operational standards imposed on other regulated entities.
5. The exemption of small businesses from part or all of the requirements or costs imposed by the rule.

Record Retention Extension

This portion of the proposed rule does not establish more stringent compliance or reporting requirements for small businesses. The extension of the record retention time period is the least stringent means of obtaining the information for the requisite five year period. This balances the Commission's interest in obtaining these records with the organizations' interest in retaining records for the shortest time frame possible. The proposed rule does not require additional records or require records be maintained in a particular fashion; it is up to the organization to determine in what manner the records may be maintained. The proposed rule does not set or change design or operational standards. Exempting small businesses from the reporting requirements would prohibit the Commission from determining whether an organization is a qualified organization and therefore eligible to conduct charity gaming; accordingly, exempting such organizations from this rule would hinder the exchange of information the statute and rule seeks to promote.

Annual Reporting Requirements

This portion of the proposed rule does not establish more stringent compliance or reporting requirements. The proposed rule relaxes the schedules and deadlines for reporting requirements. There are no alternative means to consolidate or simplify the reporting requirements. The proposed rule does not set or changed design or operational standards. The alternative option to the proposed annual reporting requirements would be to leave the rules as is; however, under this option, the Commission would have to truncate its review of the records. Truncating the review of financial records could allow certain crimes and underreporting of income to go unnoticed, which can negatively impact the prosecution of crimes related to the event and may impact licensing fees and excise taxes if income is underreported. Exempting organizations from providing financial records to the Commission would prevent the Commission from being able to enforce the charity gaming statute; specifically, the Commission would be unable to verify that funds from charity gaming events were being used solely for the lawful purpose of the organization and would render the Commission unable to determine the appropriate renewal license fees.

Initial License Fee

This portion of the proposed rule does not set or change compliance or reporting requirements for small businesses. The proposed rule does not set or change schedules or deadlines for compliance or reporting requirements. There are no less intrusive or less costly ways to consolidate or simplify compliance or reporting standards. The proposed rule does not set or change design or operational standards. Exemption of qualified organizations from this portion of the proposed rule would result in an increase of license fees paid by qualified organizations, which may result in a decrease in the number of qualified organizations conducting gaming.

Charity Game Night Limit

This portion of the proposed rule does not set or change compliance or reporting requirements for small businesses. The proposed rule does not set or change schedules or deadlines for compliance or reporting requirements. There are no less intrusive or costly ways to consolidate or simplify compliance or reporting standards. The proposed rule does not set or change design or operational standards. Exemption of qualified organizations from this portion of the proposed rule would hinder the Commission's regulation of this type of allowable event, which the rule seeks to promote.

Annual Conference Material

This portion of the proposed rule relaxes reporting requirements for small businesses insofar as those qualified organizations that would normally provide certain information to the Commission are no longer required to do so. The proposed rule does not set or change schedules or deadlines for compliance or reporting requirements. The proposed rule does not set or change design or operational standards. The proposed rule eliminates the reporting requirement to avoid unnecessary costs and requirements on both the Commission and on small businesses.

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